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O.P.No.811 of 2019

In the High Court of Judicature at Madras

Dated : 10.9.2025

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Original Petition No.811 of 2019

Yeses Infrastructure Private
Ltd., rep.by its MD
S.Subramanyam Naidu,
No.6-2-918/3/10, Siva Sai
Nilayam, Opposite State
Bank of India, Khairatabad
Branch, Hyderabad-500004.

...Petitioner

Vs

Empee Power Company (India)
Ltd., rep.by its Managing
Director, 'Empee Tower',
59, Harris Road, Pudupet,
Chennai-2.

...Respondent

PETITION under Section 34 of the Arbitration and Conciliation
Act, 1996 praying to set aside the award dated 25.3.2019 passed by
the sole Arbitrator and for costs.

For Petitioner : Mr.Amalraj S.Penikilapatti

For Liquidator of
the Respondent : Mr.Avinash Krishnan Ravi



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ORDER

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This is a petition filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the Act) seeking to set aside the award dated 25.3.2019 passed by the learned Arbitrator.

2. It is worthwhile to make a mention here that after filing of this original petition, a memo dated 22.6.2022 has been filed by the then counsel on record for the respondent that one M/s.A & A International Trading Private Limited had initiated proceedings before the National Company Law Tribunal (NCLT), Division Bench-I, Chennai under Section 33 of the Insolvency and Bankruptcy Code, 2016 as against the respondent and that by order dated 21.3.2022, the NCLT appointed one Mrs.Lalitha as liquidator of the corporate debtor.

3. Heard both.

4. The case of the petitioner is as follows :

(i) The respondent issued a tender notification dated 16.4.2007 inviting bids for execution of the work of construction of 20 MW



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Baggasse based co-generation plant at Andhra Pradesh. The petitioner submitted their offer and it was accepted. The contract was awarded in favour of the petitioner on 31.8.2007. After receiving the work order, the petitioner commenced the work. On satisfaction of the performance of the petitioner, the respondent awarded further works under repeat order basis to carry out various works even for the respondent's sister company namely M/s.Empee Sugars & Chemicals Ltd. The petitioner completed all the works successfully under six work orders.

(ii) Later, disputes arose with respect to settlement of the bills and the petitioner was making a claim of Rs.3,58,26,992/-, which was denied by the respondent. This resulted in the issuance of the arbitration notice and the appointment of the arbitrator.

(iii) The case of the respondent was that whatever amount was due and payable to the petitioner was already settled and that the claim made by the petitioner was unsustainable.

(iv) The sole Arbitrator framed the following issues for consideration :

"1. Whether the work orders issued to the Claimant pertaining to the works for M/s.Empee Sugars & Chemicals Pvt. Ltd. are to be treated as



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parf and parcel of the contract issued by the respondent I.e. M/s. Empe Power Company (India) Ltd.?

2. What are the various work orders that have to be deemed as part and parcel of the instant contract to be considered as subject matter of this Arbitration?

3. What is the gross or the cumulative value of the actual works executed by the claimant?

4. Whether the respondent had made short or part payments for each of the running bills to the claimant or whether all the running bills were regularly paid in full by the respondent?

5. What is the cumulative payment made by the respondent till date to the claimant?

6. Whether the minutes of the meeting dated 30.4.2010 will tantamount to a valid 'discharge' 'no-dues' or 'full and final settlement' certificate from the claimant and whether the claimant is barred from raising its claims after signing the said minutes of the meeting?

7. Whether the claimant was constrained to sign the minutes of the meeting dated 30.4.2010 under financial coercion and duress to receive at least some amounts that the respondent may immediately pay to the claimant and its creditors?

8. Whether the claimant is entitled to any of its claims? If so, how much and under what heads?



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9. Whether the respondent is entitled to any of its counter claims? If so, how much and under what heads?"

(v) The sole Arbitrator rejected claim Nos.1 to 8 covered under issue Nos.1 to 8 as not substantiated and also the counter claim made by the respondent, which was issue No.9.

(vi) Challenging the same, the petitioner is before this Court.

5. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned award.

6. The main ground that was raised by the learned counsel for the petitioner is that the learned Arbitrator failed to appreciate the fact that the six work orders must be deemed to be part and parcel of the composite contract between the parties, that therefore, the work order pertaining to M/s.Empee Sugars & Chemicals Limited must be treated as part and parcel of the composite contract issued by the respondent and that the so-called minutes of the meeting dated 30.4.2010 will not bind the petitioner since they were made to sign under financial duress.



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7. In the considered view of this Court, the learned Arbitrator considered each and every issue in its proper perspective and assigned reasons for rejecting the claims made by the petitioner.

8. When this Court exercises its jurisdiction under Section 34 of the Act, it is neither an appellate jurisdiction nor a review jurisdiction. This Court merely tests the award and sees if the award suffers from any of the contingencies provided under Section 34 of the Act.

9. In the case in hand, the purport of the arguments addressed on the side of the petitioner was focussed towards the ground of patent illegality. The test for patent illegality was explained by the Hon'ble Apex Court in the case of **OPG Power Generation (P) Ltd. Vs. Enxio Power Cooling Solutions (India) Private Ltd. & another [reported in 2025 (2) SCC 417]**. None of the grounds as was explained by the Hon'ble Apex Court is available in the present case.

10. In other words, the award passed by the learned Arbitrator does not fit in any of the 8 pigeon holes under Section 34 of the Act as



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was enunciated by the Hon'ble Apex Court in the case of ***Ssangyong Engineering & Construction Company Limited Vs. NHAI*** [reported in 2019 (15) SCC 131].

11. In the light of the above discussions, this Court does not find any ground to interfere with the award passed by the learned Arbitrator.

12. Accordingly, the above original petition stands dismissed.

RS

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